

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CARDOW, INC.,

Plaintiff,

v.

JEFFREY BERKOWITZ and
JOE R. TANORY, JR,

Defendants.

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Civil Action No. 09-CV-6943 (JSG)

ECF Case

JURY TRIAL DEMANDED

**PLAINTIFF AND COUNTERDEFENDANT CARDOW, INC.'s
REPLY TO COUNTERCLAIMS**

Plaintiff and Counterdefendant Cardow, Inc. ("Cardow") for its Reply to counterclaims of defendant and counterplaintiff Joe R. Tanory, Jr., through its attorneys undersigned, answer and affirmatively plead as follows:

COUNTERCLAIMS

THE PARTIES

1. Admits.
2. Admits.

JURISDICTION AND VENUE

3. Admits.
4. Admits.

INFRINGEMENT OF US. PATENT NOS. 5,353,608 AND D374,410

5. Admits that United States Patent No. 5,353,508 issued from the United States Patent and Trademark Office on October 11, 1994 and denies that said patent legally issued.

6. Admits that United States Patent No. D374,410 issued from the United States Patent and Trademark Office on October 8, 1996 and denies that said patent legally issued.
7. Denies.
8. Admits.
9. Admits.
10. Denies.
11. Denies.
12. Denies.

JURY DEMAND

Cardow, Inc. hereby demands a jury trial on all triable claims and defenses.

SEPARATE DEFENSES

Counterdefendant Cardow, Inc. asserts the following separate defenses.

First Separate Defense

1. The Counterclaim fails to state a claim upon which relief can be granted.

Second Separate Defense

2. If counterdefendant infringed or violated any rights of plaintiffs, it did so innocently.

Third Separate Defense

3. Counterclaimant's claims are barred in whole or in part by the doctrine of unclean hands.

Fourth Separate Defense

4. Counterclaimant's claims are barred in whole or in part by the doctrine of laches.

Fifth Separate Defense

5. Counterclaimant's claims are barred in whole or in part by the doctrine waiver.

Sixth Separate Defense

6. Counterclaimant's claims are barred in whole or in part by doctrine of acquiescence.

Seventh Separate Defense

7. Counterclaimant's claims are barred in whole or in part by the doctrine of estoppel.

Eighth Separate Defense

8. Counterclaimant lacks standing, in whole or in part, to assert the claims made in the complaint.

Ninth Separate Defense

9. United States Patent Nos. 5,353,608 and D374,410 are invalid.

Right to Assert Additional Defenses

10. Due to the vague and ambiguous nature of the counterclaim, counterdefendant cannot ascertain at this time whether additional, but as-yet unstated, defenses may be available. Accordingly, counterdefendant reserves the right to assert additional defenses in the event that such defenses become apparent through discovery.

WHEREFORE, counterdefendant Cardow, Inc. requests that judgment be entered as follows:

- A) Dismissing Plaintiffs' claims against counterdefendant Cardow, Inc. in their entirety, with prejudice;

B) that the Court find that counterclaimant is not entitled to any of its relief, or any relief whatsoever;

C) that the Court declare United States Patent Nos. 5,353,608 and D374,410 invalid, unenforceable and/or not infringed by counterdefendant Cardow, Inc.;

D) that the Court deem this to be an exceptional case under provisions of 35 U.S.C. § 285 and award counterdefendant its reasonable attorneys fees, expenses and costs of this action; and

E) that the Court award counterdefendant Cardow, Inc. such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 27, 2011

HART, BAXLEY, DANIELS & HOLTON

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*Attorneys for Plaintiff and Counterefendant
Cardow, Inc.*

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing

PLAINTIFF AND COUNTERDEFENDANT CARDOW, INC.'s

REPLY TO COUNTERCLAIMS

was served on defendant JOE R. TANORY, JR. on this 27th day of January 2011 by first-class mail, postage prepaid, in an envelope address as follows:

Mr. Joe R. Tanory, Jr.
1919 Oxmoor Road #121
Birmingham, Alabama 35209

s/Joseph T. Murray
Joseph T. Murray